

**STATE OF NEW HAMPSHIRE  
INTER-DEPARTMENT COMMUNICATION**

**FROM** Philip Trowbridge, P.E.  
Water Quality Standards Program Manager

**Date** January 4, 2012

**Offices**  
Dept of Environmental Services  
Water Division

**SUBJECT** Classification Subcommittee Meeting Minutes from October 6, 2011

**TO** Classification Subcommittee

1. Designated Uses for Surface Waters

a. Designated Uses and Public Trust Doctrine / Agricultural & Industrial Designated Uses

The group reviewed the basic premises of common law and public trust doctrine related to surface waters because it is beneficial for designated uses to be consistent with common law and riparian rights to avoid conflicts related to ‘takings’.

The designated uses for “recreation in and on the water” and “protection and propagation of fish, shellfish, and wildlife” (which are required under the CWA) all have strong roots in common law. No conflicts are expected for these uses. The public water supply designated use is less clearly associated with a common law use but could be justified on the basis of “sustenance”.

The designated use for agriculture, particularly irrigation, is not established as a public trust use. Instead, it fits better as a riparian right of the landowner, which must be balanced with ‘reasonable use’ to preserve the other common law uses.

The group felt that there should not be specific designated uses for agriculture and industry. Assignment of such a designated use would not provide any special protection or benefit to farmers or industry, while making the water quality standards more complicated and potentially conflicting with common law.

b. Flood and Erosion Hazard Protection

The group also discussed the proposed flood and erosion hazard protection designated use. There were many questions and issues raised. Introducing this new designated use could potentially conflict with FEMA duties related to flood insurance maps. The group found this designated use to be hard to define because there is a tension between protecting property in the floodplain and using the floodplain as a natural means for flood attenuation. Natural and man-made flood risks cannot be easily separated. As a result of these questions, the group did not recommend adding a new designated use for flood and erosion hazard protection unless there was a pressing need that could not be filled any other way.

## 2. Wetland Water Quality Standards

### a. Interaction between CWA Sections 401 and 404 for the regulation of wetlands

There was a brief discussion about potential conflicts between different sections of the Clean Water Act (sections 401 and 404) if water quality standards were applied to wetlands. The group concluded that there were no specific conflicts between these sections that would preclude the development of water quality standards for wetlands.

### b. Wetland Complex GIS analysis

Ken Edwardson presented an analysis of wetland assessment units to show how they spatially relate to open water bodies. The purpose of this analysis was to estimate the proportion of wetlands that are associated with open water. The analysis showed that approximately 87% of wetlands are associated with an open water system. Comments from the group suggested that this analysis may over-estimate the percent of wetlands associated with open water systems because the connection should be based on water levels, not proximity, and there are more wetlands in reality than have been mapped by the National Wetlands Inventory. However, there are also more open waters than have been mapped in 1:24,000 NHD used for the analysis. Finally, the group concluded that, while the percentage of wetlands that are not associated with open waters may be small, these types of wetlands are still numerous and difficult to evaluate using water quality standards.

### c. EPA grant deliverables for wetland WQS development

Ted Diers presented information about the new grant DES had received to work on water quality standards for wetlands. The group agreed to serve as the advisory committee as DES moves forward with this grant.

## 3. Discussion of priorities and next steps

The next steps for the subcommittee are:

- Prepare a final summary of designated uses and definitions as discussed by this group.
- Serve as the advisory committee for the wetland water quality standards grant.

## Working Proposal for Designated Uses for New Hampshire Water Quality Standards

Developed by the Classification Subcommittee of the  
Water Quality Standards Advisory Committee (December 2011)

Description of designated uses. This description is needed because the official definition in regulation is hard to understand. Designated uses are a cornerstone of the classification process and need to be understood by all stakeholders.

*The Clean Water Act requires States and Tribes to designate appropriate uses for water bodies to be achieved and protected. These so-called “designated uses” represent the range of activities that the States want to restore or maintain for the water body. Designated uses can be activities that directly benefit humans, for example clean water for recreation, or attributes that provide indirect ecosystem services, such as supporting aquatic organisms. All designated uses require some level of protection through water quality criteria. The Clean Water Act requires that States include recreation in and on the water as well as protection and propagation of fish, shellfish and wildlife in the list of designated uses for all water bodies except under special circumstances. States can add other designated uses as deemed appropriate.*

### Proposed designated uses

Use Type	Proposed Designated Uses	Definition	Applicability
Recreation in and on the water*	Swimming and Other Recreation in and on the Water	Waters that support recreation in and on the water, including, where applicable, swimming, wading, boating of all types, fishing, surfing, and similar activities.	Applicable to All Surface Waters
	Fish Consumption	Waters that support a population of fish free from toxicants and pathogens that could pose a human health risk to consumers.	
	Shellfish Consumption	Waters that support a population of shellfish free from toxicants and pathogens that could pose a human health risk to consumers.	
Protection and Propagation of Fish, Shellfish, and Wildlife*	Aquatic Life Integrity	Waters that support aquatic life, including a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of similar natural habitats of the region.	
	Wildlife	Waters that provide habitat capable of supporting wildlife on a regular or periodic basis. Wildlife are undomesticated life forms which may utilize the water body to support any life stage or activity.	
Public Water Supplies	Potential Drinking Water Supply After Adequate Treatment	Waters that with adequate treatment will be suitable for human intake and meet state/federal drinking water regulations.	Applicable to Some Surface Waters

\*National Goal Uses from Section 101(a) of the Clean Water Act